

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

FILED

October 13, 2020

**OFFICE OF
APPELLATE COURTS**

In Re Petition for Disciplinary Action
against HOWARD S. KLEYMAN,
a Minnesota Attorney,
Registration No. 0056558.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility (Director) files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney (respondent) was admitted to practice law in Minnesota on April 30, 1971. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Respondent agrees to use his attorney trust account to facilitate a fraudulent transaction.

1. In July 2017, Harold Soto Boigues requested respondent to act as an escrow agent for a transaction between the Hanson Group of Companies (Hanson Group), of which Boigues was Chief Executive Officer, and GCM HONG KONG LIMITED (GCM), through Kenji Fujita, its president. At that time, respondent had known Boigues for approximately four years, had acted as an escrow agent for two or three prior transactions involving Boigues and "conferred with parties involved in transactions with Hanson Group of Companies during 2017 on nine occasions."

2. Through a basic internet search, the Director found reliable information that Harold Boigues is associated with a number of criminal or fraudulent schemes. For example, on September 11, 2014, Boigues was arrested in Bucks County, Pennsylvania, and charged with three felonies for attempting to buy ten kilograms of cocaine—with a \$1 million street value—in an undercover sting operation. Boigues posted a bail bond, which was later discovered to be fraudulent, and was released. Thereafter, Boigues failed to appear and a warrant for his arrest was issued and remains outstanding. According to respondent, Boigues currently resides in the Dominican Republic.

3. The July 2017 transaction between Hanson Group and GCM involved the sale of a bank draft from Hanson Group to GCM and was memorialized, in part, by an “Agreement concerning the payment and the refund of deposit” (Agreement). Respondent did not draft the transaction agreement.

4. Respondent stated that “[i]n mid-July [2017] Mr. Boigues sent me the purchase agreement/transaction document containing the terms of the agreement executed by the parties.”

5. The Agreement required GCM to pay 50,000 Euros directly to Hanson Group and 150,000 Euros to respondent on Hanson Group’s behalf, within seven days of signing the Agreement; in exchange, Hanson Group would provide GCM with a bank draft valued at 1,000,000 Euros. GCM intended to use the bank draft to demonstrate its financial stability with regard to the planned development of certain real estate in Japan.

6. The Agreement placed the following obligations on respondent:

[Respondent] will confirm the arrival of [the bank draft] with a face value of EUR 1,000,000.00 which [is] described in the attached leased bank draft agreement A with Mizuho Bank which is [GCM’s] bank. And [respondent] will declare to [GCM] that [the bank draft] arrive[d] at Mizuho Bank with full responsibility of [respondent] within three weeks from the remittance day of [the 50,000 and 150,000 Euros from GCM].

EUR 150,000.00 will be released to [Hanson Group] from [respondent] within three banking days from the declaration day [referenced above]. If [respondent] can't make a declaration [referenced above] within three weeks from the remittance day [of the 50,000 and 150,000 Euros from GCM], [Hanson Group] will refund EUR 50,000.00 to [GCM] within four weeks from the remittance [of the 50,000 and 150,000 Euros from GCM]. And [respondent] will refund EUR 150,000.00 to [GCM] within four weeks from the remittance [of the 50,000 and 150,000 Euros from GCM].

7. The Agreement bears respondent's electronic signature, his initials on all four pages of the document and a copy of respondent's passport. The Agreement also reflects information concerning respondent's Wells Fargo Bank trust account ending in 3754, including the bank name, address, routing number, account name (Howard S. Kleyman, Attorney – Client Trust Account (IOLTA)) and complete account number. It was this account into which GCM was directed to deposit the 150,000 Euros. Mr. Fujita believed the arrangement was legitimate because the funds were to be held by an attorney in a trust account. Mr. Fujita advised that the use of an attorney trust account made him comfortable in transferring the 150,000 Euros.

8. The July 2017 statement for respondent's trust account ending in 3754 reflects (a) the deposit of \$168,106.43 (the dollar equivalent of 150,000 Euros) from GCM on July 17, 2017; and (b) a \$166,425.37 withdrawal on July 19, 2017. With respect to this withdrawal, respondent stated:

As soon as I notified Hanson Group that I had received the Fujita funds into my trust account, I was provided with instructions by Hanson Group to deposit the funds into an account it had at Wells Fargo Bank. I completed a blank deposit slip at Wells Fargo Bank with its account details and caused the deposit to be made to the Hanson Group account.

Respondent did not verify with Fujita that Fujita received the agreed-upon bank draft before releasing the funds from his attorney trust account to Hanson Group.

9. Pursuant to the Agreement, GCM also wired 50,000 Euros to Hanson Group's Wells Fargo Bank account.

10. Respondent received a fee of \$1,680 from the funds GCM wired into his trust account for serving as the escrow agent in its transaction with Hanson Group. Respondent transferred his fee to his operating account and did not return these funds to the trust account at any point.

11. On or about August 2, 2017, Hanson Group provided GCM with an instrument reflecting a value of 1,000,000 Euros. GCM objected to this instrument as it failed to fulfill the contract terms. GCM believed this instrument to be a promissory note, rather than the agreed-upon bank draft. On September 24, 2017, Hanson Group provided GCM with another instrument reflecting a value of "Deux Millions [sic] Euros" or 2,000,000 Euros. GCM believed this instrument to be a postdated and fraudulent personal check. It was GCM's position that neither of these instruments qualified as the bank draft required under the Agreement and that Hanson Group had, therefore, failed to satisfy its obligations under the Agreement.

12. On November 2, 2017, Fujita wrote to both Hanson Group and respondent and expressed GCM's dissatisfaction with the instruments provided. Fujita referenced several prior email communications in which he requested a refund of GCM's 200,000 Euros. In his November 2, 2017, letter, Fujita again requested Hanson Group and respondent to immediately refund the 200,000 Euros to GCM.

13. Respondent responded to Fujita with an undated letter in which he stated that he never saw the Agreement, did not sign the Agreement and had no knowledge of its language obligating him in the ways described in paragraph 6, above. This statement to Fujita contradicts the information on the face of the Agreement.

14. Respondent produced to the Director a December 29, 2017, email from Hanson Group in which Hanson Group acknowledged inserting respondent's electronic signature onto the Agreement by mistake. Hanson Group further stated,

“Hanson Group did not request [respondent] to guarantee the transaction. His only role was to act as the escrow agent for a nominal fee.”

Respondent acknowledges Hanson Group engaged in fraud.

15. On March 23, 2018, respondent sent an email to “Secure Platform Funding” (SPF), a lending institution. SPF posted respondent’s email to its website. Respondent’s email reads as follows:

I acted as an escrow agent last year for the Fujita transaction. Someone at HANSON Group forged my signature on an agreement that guaranteed payment to Fujita. I had no knowledge of that agreement nor did I sign it. Hanson Group acknowledged those facts to me in writing.

I do not represent them nor have knowledge of their transactions. If you have documents with my signature on them, I would appreciate if you would forward me copies so I can forward them to the proper authorities so that the people perpetrating this fraud will get the proper consequences.

16. In a second email to SPF, respondent provided a copy of the December 29, 2017, email he received from Hanson Group and stated, “This is the message I received after I requested clarification of how my signature was on a guarantee that [sic] had not seen before. My only function was as escrow agent.”

17. The Director met with respondent on October 12, 2018. During the meeting, respondent stated that, given Hanson Group’s action in allegedly affixing his signature to the Agreement without respondent’s consent, he did not intend to involve himself in any future transactions with Hanson Group or Harold Boigues.

18. With his response to the complaint Fujita submitted to the Director, respondent produced a 30-page document, which he states is the only document he was given in connection with the GCM/Hanson Group transaction. In his response, however, respondent acknowledged that among the terms of the GCM/Hanson Group transaction was that he would “accept a deposit into my trust account and pay the

contracted amount on behalf of the purchaser.” The 30-page document respondent provided does not contain such a provision and does not even mention respondent as having any involvement in the transaction. The 30-page document also does not include reference to respondent’s Wells Fargo Bank trust account ending in 3754. All of this information does, however, appear in the Agreement of which respondent claims no knowledge.

19. Despite respondent’s claim during his October 12, 2018, meeting with the Director that he did not intend to involve himself in any future Hanson Group or Harold Boigues transactions, respondent repeatedly did so. See paragraph 37 below.

Respondent misuses his attorney trust account, fails to maintain required trust account books and records and provides false and misleading information to the Director.

20. As noted, respondent utilized his Wells Fargo Bank trust account ending in 3754 to process the funds he received from GCM in connection with the transaction with Hanson Group. Rule 1.15(a), Minnesota Rules of Professional Conduct (MRPC), limits the funds that a lawyer can properly deposit into a trust account to “funds of clients or third persons held by a lawyer **in connection with a representation**” (emphasis added). Inasmuch as respondent was not serving as an attorney for either Hanson Group or GCM in the transaction, but only as an escrow agent, respondent’s use of his trust account ending in 3754 for the transaction was improper. During the October 12, 2018, meeting, the Director advised respondent that the use of his trust account for transactions with no connection to a legal representation was improper. Despite being so advised, respondent continued to use his trust accounts for escrow transactions.

21. On September 17, 2018, respondent’s trust account ending in 3754 became overdrawn. Consistent with the requirements of Rule 1.15(j) through (o), MRPC, Wells Fargo Bank reported the overdraft to the Director.

22. On September 27, 2018, the Director wrote to respondent and requested an explanation for the overdraft and copies of his complete July through September 2018 books and records for his trust account ending in 3754, including bank statements, duplicate deposit slips, check register, client subsidiary ledgers, trial balance reports and reconciliation reports.

23. Respondent responded to the Director's inquiry by letter dated October 8, 2018. Respondent explained that the overdraft had been the result of an unanticipated wire transfer fee. Respondent explained further that a deposit by wire transfer into the account the day after the overdraft had served to eliminate the overdraft and that the wire transfer "was from Mark Duffin on behalf of MS Neuhaus, a **client**" (emphasis added). Respondent also stated that all of the funds in his trust account during the period July through September 2018, "were owned by Mark Neuhaus," and all the activity in the account "was all related to one **client**, M.S. Neuhaus" (emphasis added).¹ Respondent enclosed with his letter an unsigned letter dated October 8, 2018, purportedly from M.S. Neuhaus, stating that, "in the normal course of business, we caused approximately \$34,500.00 to be deposited into your trust account," and "authorized and directed you to make various payments of those funds to various nominees by wire transfers and transfers by Wells Fargo Zelle."

24. With his October 8, 2018, letter, respondent provided the July through September 2018 bank statements and check registers for his trust account ending in 3754. On information and belief, respondent did not contemporaneously maintain the check registers, but created them in response to the Director's request. Respondent did

¹ In December 2007, the United States Securities & Exchange Commission (SEC) commenced a federal lawsuit against Mark Neuhaus alleging repeated acts of securities fraud. As a result of the SEC's lawsuit, a \$14,221,508 judgment was entered against Neuhaus in August 2009, and he was permanently restrained from offering or selling securities. In addition, during the period 2002 to 2007, federal tax liens totaling well in excess of a million dollars were entered against Neuhaus.

not provide any client subsidiary ledgers, trial balance reports or reconciliation reports. On information and belief, respondent failed to contemporaneously maintain those materials during the period from at least July through September 2018.

25. Much of the deposit and disbursement activity appearing on the July through September 2018 bank statements for respondent's trust account ending in 3754 appeared to involve "Aspen Financial Group, Inc." (Aspen), an entity whose registered address was the same as respondent's and in which respondent appeared to have an interest. Again, respondent previously stated to the Director that all the activity in his trust account ending in 3754 during that period was on behalf of Mark Neuhaus. Respondent did not, however, explain Aspen's connection to Neuhaus.

26. The following names were connected with several of the wire transfers reflected on the July through September 2018 bank statements for respondent's trust account ending in 3754: (a) Michelle Baldwin; (b) Gulf Coast Energy; (c) David Sinclair²; (d) Rodrigo Perez Del Toro Rivera; (e) Elizabeth Duffin; and (f) John Williams. Again, respondent had stated that all the activity in the account during that period was on behalf of Mark Neuhaus. Respondent did not, however, explain these individuals' connections to Neuhaus.

²David Sinclair is an accountant in the United Kingdom and is the designated director of many companies, including HSK Law Limited and Peter HSK Limited. In 2008, David Mason asked David Sinclair to set up an investment shell company which had no real function and was used purely for fraud. Sinclair allowed Mason to use a bank account under Sinclair's control to transfer investors' money to Mason and associated boiler room fraudsters. On August 19, 2011, as a result of the Mason transaction, David Sinclair was publicly disciplined by The Financial Conduct Authority and the Bank of England Prudential Regulation Authority, and was prohibited from performing any controlled function for any person or professional firm for failing to exercise due diligence. This information is publically available by the United Kingdom's Financial Conduct Authority.

27. Given the many questions created by the circumstances related above, the Director converted the overdraft inquiry into a formal disciplinary investigation. On November 19, 2018, the Director issued to respondent a notice of investigation regarding the trust account overdraft matter. Among other things, the notice of investigation requested respondent's complete books and records, including the bank statements, check register, client subsidiary ledgers, trial balance reports and reconciliation reports, for his trust account ending in 3754 for the periods January through June 2018, and October 2018.

28. In his December 9, 2018, response to the notice of investigation, respondent stated, "I have not represented Mark Neuhaus in any legal matters. I do not have any retainer agreement with him. I have acted as escrow agent for him." This is inconsistent with information appearing in respondent's October 8, 2018, letter, in which respondent twice referred to Neuhaus as a "client."

29. In his December 9, 2018, letter, respondent explained the involvement of Aspen in the trust account transactions that were purportedly on behalf of Neuhaus as follows: "I am the sole owner of Aspen Financial Group, Inc. It has no relationship with Mark Duffin or Mark Neuhaus. I used that entity to transfer funds to Mark Neuhaus at his request as he requested a transfer to him that is not able to be done through the trust account. Payment by Wells Fargo 'Zelle.'"

30. Respondent further explained that an attorney, who was initially not identified by respondent and, presumably acting on Neuhaus' behalf, arranged to wire funds into respondent's trust account to then be distributed to multiple parties. Specifically:

a. “John Williams was paid one half of the proceeds and he instructed me to send some of the proceeds to him and some of it to his daughters, one of whom was Michelle Baldwin.³”

b. “The other half of the funds were paid to Mark Neuhaus.”

c. “Mark Neuhaus directed me to pay some of the funds that were deposited on his behalf to David Sinclair. Elizabeth Duffin is the wife of Mark Duffin. Rodrigo Perez Del Toro Rivera is a client of Harold Boigues. Gulf Coast Energy is a client of Mark Neuhaus. Mark Duffin and Elizabeth Duffin are clients of Mark Neuhaus.”

31. Respondent enclosed with his letter a December 9, 2018, letter purportedly signed by Neuhaus that stated, “[f]rom January I caused approximately \$115,480.00 to be deposited into your trust account.” The letter further stated that Neuhaus:

[A]uthorized and directed [respondent] to make various payments of those funds to various payees by wire transfers and by Wells Fargo Zelle. . . . I authorized payments to be made to . . . Mark Neuhaus, L.A. Garnish⁴, Gategreen, David Sinclair, Aspen Financial Group, Jonathan Williams and associates Michelle Baldwin and K.O. Law and Michelle Brown.

32. With his December 9, 2018, letter, respondent included the January through June 2018, and October 2018 bank statements, check registers and Mark Neuhaus and Harold Boigues subsidiary ledgers for his trust account ending in 3754.⁵ On information and belief, respondent did not contemporaneously maintain the check registers and subsidiary ledgers, but created them in response to the Director’s request. Respondent failed to include any trust account trial balance or reconciliation reports for

³ Michelle Baldwin is actually John Williams’ wife.

⁴ L.A., or Laura, Garnish, is Mark Neuhaus’ wife.

⁵ The subsidiary ledgers respondent provided to the Director with his December 9, 2018, letter, and with his subsequent letters referenced below, failed to identify the payee for disbursement transactions or the purpose of any transactions.

the periods of January through June 2018, and October 2018. On information and belief, respondent failed to maintain those reports during those periods.

33. Respondent's provision of subsidiary ledgers on behalf of only Neuhaus and Boigues implied that all of the activity in respondent's trust account during the period January through June and October 2018 was on behalf of those individuals.

34. Again, much of the deposit and disbursement activity appearing on the January through June and October 2018 bank statements for respondent's trust account ending in 3754 appeared to have involved Aspen. Further, the following names were connected with several of the wire transfers reflected on respondent's January through June and October 2018 trust account bank statements: (a) David Sinclair; (b) Todd P. Kulkin; (c) KO Law PLLC; (d) Gategreen; (e) Laura Garnish; (f) Harold Soto Boigues; (g) John Williams; (h) Gerardo Ariel Mancebo Rios; (i) Cesar Oscar Imbellone; (j) Miguel Angel Perez; and (k) Antonio Manuel Valdez Collado.

The Director audits respondent's attorney trust account and finds discrepancies and an ongoing relationship with the Hanson Group and its affiliates.

35. Based on the books and records respondent provided with his October 8 and December 9, 2018, letters, the Director attempted to audit respondent's trust account ending in 3754 for the period January through October 2018. However, the subsidiary ledgers respondent provided failed to account for much of the activity in the account during that period.

36. On June 18, 2019, the Director wrote to respondent and requested, among other things, subsidiary ledgers for the January through October 2018 trust account activity for which the subsidiary ledgers respondent provided with his October 8 and December 9, 2018, submissions failed to account. Among the Director's other requests were the following:

a. The identity of the "attorney" who sent the Neuhaus funds to respondent's trust account.

b. Information regarding Aspen and respondent's connection to that entity, along with the January 2018 through May 2019 bank statements and check registers for *all* bank accounts maintained by Aspen.⁶

c. With respect to each deposit entry appearing on the January through October 2018 bank statements for respondent's trust account ending in 3754, the purpose of the deposit, the client or other party on whose behalf respondent received the funds, the legal representation at issue or respondent's relationship to the transaction and copies of all documents that refer or relate to the transaction.

d. Copies of the November 2018 through May 2019 books and records for respondent's trust account ending in 3754, including, with respect to each deposit that appears in those books and records, the purpose of the deposit, the client or other party on whose behalf respondent received the funds, the legal representation at issue or respondent's relationship to the transaction and copies of all documents that refer or relate to the transaction.

37. In her June 18, 2019, letter, the Director also requested respondent to explain why he transferred funds in the Neuhaus and Boigues matters between his trust account ending in 3754 and Aspen's bank account, and to explain why he continued to be involved in transactions with Boigues after previously stating that he intended to discontinue his involvement with Hanson Group.

38. Respondent responded to the Director's June 18, 2019, letter on July 9, 2019. Respondent failed to provide subsidiary ledgers for the January through October

⁶ The only Aspen account for which respondent provided records was a Wells Fargo Bank account ending in 0240. The Director's audit of the account ending in 0240 reflected numerous transfers to "Aspen Financial Group Inc. Business Market Rate Savings . . . xxxxxx9178." Respondent failed to provide the Director with any records for this account.

2018 activity in his trust account ending in 3754 for which his October 8 and December 9, 2018, submissions had failed to account, or any of the other information and documentation summarized in paragraphs 36a through 36d, above. In addition, the trust account books respondent did enclose with his July 9, 2019, letter attributed the July through September 2018 activity in the account to individuals other than Neuhaus. This is inconsistent with respondent's claim in his October 8, 2018, letter that all activity in the trust account during that period was on behalf of Neuhaus.

39. In his July 9, 2019, letter, respondent explained his transfers between the trust account ending in 3754 and Aspen's bank account as follows: "Aspen . . . ceased doing business many years ago. For convenience, sake, I deposited my personal receipts and paid my expenses from that account. Those numbers are then reflected on my tax returns."

40. Also in his July 9, 2019, letter, respondent explained his decision to have continued involvement in Boigues' transactions as follows: "I decided that I could have a more positive affect on the Fujita matter if I maintained my relationship with Harold Boigues. I have been communicating with both parties and have achieved a settlement for Mr. Fujita. I will now see to it that it is effectuated." The Director's audit shows that respondent accepted funds into his trust account either directly from Boigues or on behalf of Boigues throughout the years 2017, 2018, and 2019. Respondent also continued to take fees from these transactions and to transfer money out of his trust account as directed by Boigues. These transactions did not involve GCM or Fujita.

41. On August 7, 2019, the Director wrote to respondent and again requested he provide, among other things, subsidiary ledgers for the January through October 2018 activity in his trust account ending in 3754 for which his October 8 and December 9, 2018, submissions had failed to account, and the other information and documentation summarized in paragraphs 36a through 36d, above. The Director also

requested respondent to explain the inconsistencies in his attribution of the July through September 2018 activity in his trust account ending in 3754.

Respondent attempts to negotiate an agreement between Hanson Group and Fujita, and provides additional documents substantiating additional trust account violations.

42. Respondent responded to the Director's August 7, 2019, letter on September 22, 2019. Respondent identified the attorney who sent the Neuhaus funds for deposit into his trust account as Daniel V. Behesnilian of Beverly Hills, California. With respect to the status of the settlement between Boigues and Fujita, respondent stated:

On my own initiative I negotiated the terms of an agreement with Mr. Fujita and facilitated Mr. Boigues' sending him a new bank draft. Mr. Fujita is still not satisfied with the new bank draft that he has now received. No payment was made to Mr. Fujita. Unfortunately my efforts did not result in a settlement.

43. Among the documents respondent enclosed with his September 22, 2019, letter to the Director with regard to his attempt to settle the dispute between Boigues and Fujita was an email dated July 3, 2019, from respondent to Fujita. This email appears to constitute respondent's first communication to Fujita regarding a potential settlement with Boigues. Respondent sent this email *after* the Director wrote to him on June 18, 2019, and questioned his continued involvement with Hanson Group and Boigues.

44. In any event, in his July 3, 2019, email, respondent stated to Fujita that he told "Hanson Group that I want to make a valuable gesture to you because of this unfortunate situation caused by them. They are willing to send you a bank draft issued by a bank for no additional consideration."

45. On July 11, 2019, respondent sent an email to Boigues and Fujita proposing the terms of their settlement. Among the terms respondent proposed were the following:

Kenji Fujita will notify the Japanese National Police Academy and the Minnesota Lawyers Professional Responsibility that his claim against the Hanson Group of Companies has been resolved in a satisfactory manner and that he is withdrawing his request for assistance. These notifications by him shall be made within three business days after he receives the above-described bank draft.

46. By responsive email also dated July 11, 2019, Fujita agreed to the terms of settlement proposed by respondent.

47. On July 20, 2019, respondent received an email from Hanson Group to which Hanson Group attached a bank draft that was sent “directly from our bank Spain office to Mr. Kenji Fujita address in Japan as per your instructions.”

48. The bank draft provided to Fujita by Hanson Group was drawn on Prominence Bank. The Director’s investigation provides credible evidence that Prominence Bank is not a legitimate financial institution. Multiple contracts provided by respondent were signed by individuals with close ties to Boigues who were identified in the contracts as Prominence Bank officials. Additionally, the Prominence Bank address provided on its website is not a bank location, but rather an office-share location in Madrid, Spain. A second address for Prominence Bank is listed in the “Autonomous Island of Mwali.” This information was readily available to respondent through basic internet searches and by review of the contracts in his possession.

49. On July 21 and 31, 2019, respondent and Fujita communicated by email regarding the legitimacy of the bank draft provided by Hanson Group. Fujita ultimately refused to accept the bank draft tendered to him by Hanson Group alleging it was fraudulent and the settlement failed.

50. With his September 22, 2019, letter, respondent also provided a computer-generated set of books for his trust account ending in 3754 covering the period January 2018 through May 2019. These books attribute the activity in respondent's trust account differently than the trust account books respondent provided with his October 8 and December 9, 2018, letters. Once again, respondent failed to provide (a) any trial balance or reconciliation reports, indicating that he was still not maintaining those reports, and (b) with respect to all the deposits reflected on his trust account bank statements, the purpose of the deposit, the client or other party on whose behalf respondent received the funds, the legal representation at issue or respondent's relationship to the transaction and copies of all documents that refer or relate to the transaction.

51. The Aspen bank statements respondent provided with his September 22, 2019, letter reflect multiple electronic payments of court filing fees, presumably on behalf of respondent's clients. For that reason, the Director audited the Aspen account for the period January to December 2018.

The Director's audits of respondent's business and trust accounts show an ongoing pattern of mishandling client and third party funds.

52. The Director's audit of the Aspen account confirmed that on multiple occasions, respondent deposited client filing fee advances into that non-trust account and later electronically paid the filing fees from the Aspen account.

53. The Director's audit of the Aspen account also revealed the following:

a. Respondent primarily used the Aspen account to pay his own personal and business expenses.

b. On multiple occasions, respondent transferred funds from his trust account ending in 3754 to the Aspen account in order to cure overdrafts on, or otherwise cover disbursements from, the Aspen account. For example, on April 10, 2018, respondent transferred \$3,000 from his trust account into the

Aspen account. Also on April 10, 2018, respondent's Aspen account check no. 10687 in the amount of \$3,000, cleared the account. If not for respondent's transfer of funds from the trust account, check no. 10687 would not have cleared the Aspen account. Similarly, on August 29, 2018, the balance in respondent's Aspen account was a negative \$13.20. On that date, respondent transferred \$100 from his trust account ending in 3754 to the Aspen account in order to cure the negative balance.

c. On multiple occasions, respondent inexplicably transferred funds from his Aspen account to his trust account ending in 3754.

54. In light of the above, the Director determined to expand her audits of respondent's trust account ending in 3754 and the Aspen account. On November 8, 2019, the Director requested respondent to provide the (a) January 2015 to January 2018 bank statements, duplicate deposit slips, check register, client subsidiary ledgers, and trial balance/reconciliation reports for his trust account ending in 3754; and (b) January 2015 to December 2017 bank statements and check register for the Aspen account.

55. Respondent provided most of the requested trust account materials on January 10, 2020, although he again did not provide any trial balance or reconciliation reports for his trust account ending in 3754, indicating that he did not maintain those reports during the period from at least January 2015 to January 2018. Respondent did not provide the requested information for the Aspen account.

56. Thereafter, the Director requested and received approval of an investigatory subpoena directed to Wells Fargo Bank and covering the January 2015 through November 2018 cancelled checks and deposit offsets for the Aspen account. This request was made in order to enable the Director to identify the clients whose filing fee advances respondent had deposited into the Aspen account and to track payment of the corresponding filing fees.

57. The Director completed audits of respondent's trust account ending in 3754⁷ for the period January 2016 to May 2019, and the Aspen account for the period December 2014 to December 2018.

58. The bank statements for, and the Director's audit of, respondent's trust account ending in 3754 reflect multiple wire credits of large amounts into the account on behalf of a variety of individuals and entities and disbursement of substantial amounts of those funds to Harold Boigues or his wife, Raquel Russo. For example:

a. On October 1, 2018, \$29,167.50 was wired into respondent's trust account for "AMK Investors." Respondent subsequently made disbursements from these funds totaling \$28,522.35 to Boigues.

b. On October 17, 2018, \$112,705.89 was wired into respondent's trust account for "Imbellone." Respondent subsequently made disbursements from these funds totaling \$100,574.15 to Boigues and his wife.

c. On October 24, 2018, \$43,985.16 was wire credited into respondent's trust account for "Servisports."⁸ Respondent subsequently made disbursements from these funds totaling \$9,377 to Boigues.

d. On April 3, 2019, \$220,342 was wired into respondent's trust account. The bank statement described the wire credit as "Consultoria E Inversiones Paneurope Initial Deposit Corvin Engin." Respondent subsequently made disbursements from these funds totaling \$213,124 to Boigues and his wife.⁹

⁷ Respondent maintained a Wells Fargo Bank trust account ending in 9864 until June 2017, when he closed that account and opened the trust account ending in 3754. For simplicity, both accounts will be referred to as the trust account ending in 3754.

⁸ This wire credit was in connection with an October 17, 2018, contract between Hanson Group and Servisports. Pursuant to the contract, CGLI Bank was to provide to Servisports an instrument valued at 400,000 Euros. CGLI Bank is, however, fictitious and the transaction therefore fraudulent.

⁹ The following two additional transfers to Harold Boigues are reflected on the bank statement: \$50,000 on April 8, 2019, and \$70,100 on April 9, 2019. Both of those

59. Respondent received fees from each of the wire credits detailed above, and from most of the other funds wired into his trust account. Specifically, respondent received (a) \$2,500 from the AMK Investors wire credit; (b) \$500 from the Imbellone wire credit; (c) \$1,166 from the Servisports wire credit; and (d) \$2,500 from the Consultoria wire credit.

60. The Director's audit of respondent's trust account ending in 3754 reflected multiple occasions in which respondent made disbursements of client/escrow funds that exceeded the amount of funds he had deposited into the account for that client/escrow matter. In each such instance, respondent made an entry to the affected client/escrow subsidiary ledger that read, "Adjustment to Correct Bookkeeper Error." These entries, which appeared only in respondent's trust account books and not on the bank statements, served to transfer funds originally attributed to one client/escrow matter to another. For example, the Director's audit of respondent's trust account ending in 3754 reflected that by September 26, 2018, respondent had disbursed \$2,439 more on behalf of "Williams" than he had deposited into the account for "Williams." Respondent's Williams subsidiary ledger reflects a September 30, 2018, credit entry for \$4,434 with the following description: "Adjustment to Correct Bookkeeper Error." Respondent's "Duffin" subsidiary ledger reflects a corresponding debit entry for \$4,434 that is also described as an "Adjustment to Correct Bookkeeper Error." Respondent posted similar entries between the following client/escrow subsidiary ledgers: (a) \$625 from "Duffin" to "Gulf Coast Energy;" (b) \$1,554 from "Rivera" to "Imbellone;" (c) \$3,485.80 from "Rios" to "Imbellone;" (d) \$1,049.22 from "Servisports" to "Imbellone;" and (e) \$3,019.81 from "Winning Vista Development" to "Servisports."

transfers were reversed, and the underlying funds returned to the account, on April 18, 2019. On April 16, 2019, before these transfers were reversed, a \$150,000 "ACH Contrib" was returned unpaid because there were insufficient funds in the account to cover it.

61. The Director's audit of respondent's trust account ending in 3754 also reflected extensive periods of time in which the actual balance in respondent's trust account was not sufficient to cover the escrow balances respondent's subsidiary ledgers indicated he was supposed to be holding in the account. These shortages were the result of the various instances referenced above in which respondent disbursed more in an escrow matter than he had deposited into his trust account for that escrow matter.

62. Respondent included with his January 10, 2020, submission a subsidiary ledger in the name "Ty." Respondent posted to this ledger the July 2017 deposit and disbursement activity detailed in the Fujita matter in paragraph 8, above, which respondent had previously stated was in connection with the GCM/Hanson Group transaction. The Ty subsidiary ledger shows the \$166,425.37 withdrawal on July 19, 2017. With regard to this transfer, respondent previously stated he "completed a blank deposit slip at Wells Fargo Bank with its account details and caused the deposit to be made to the Hanson Group account." The Ty subsidiary ledger submitted on January 10, 2020, shows the July 19, 2017, transfer as an electronic funds transfer and "Neuhaus" as the recipient of the transfer, implying that Mark Neuhaus is somehow connected to Hanson Group and/or Harold Boigues.

63. On information and belief, given the differing versions of the books respondent produced for his trust account ending in 3754, the shortages reflected by those books, and the many "Adjustments to Correct Bookkeeper Error," the Director alleges respondent failed to maintain those books contemporaneously and that the information reflected in those books is not an accurate or reliable reflection of the activity in the account.

64. The Director's audit of respondent's trust account ending in 3754 also reflected that, on occasion, respondent transferred funds from his trust account ending in 3754 to his Aspen account and issued checks in disbursement of the transferred funds from his Aspen account. For example:

a. On November 8, 2016, respondent transferred \$1,850 from his trust account ending in 3754 to his Aspen account. Respondent attributed the funds transferred to David Sinclair. Also on November 8, 2016, Aspen check no. 10618, payable to “Ev Lake Tahoe Lodging” and in the amount of \$1,850, cleared the account.

b. On November 21, 2016, respondent transferred \$3,850 from his trust account ending in 3754 to his Aspen account. Respondent attributed the funds transferred to “Spyker.” Also on November 21, 2016, Aspen check no. 10619, payable to “Ev Lake Tahoe Lodging” and in the amount of \$3,850 cleared the account.

c. On December 7, 2016, respondent transferred \$4,803.34 from his trust account ending in 3754 to his Aspen account. Respondent attributed the funds transferred to David Sinclair. Also on December 7, 2016, Aspen check no. 10621, payable to “Ev Lake Tahoe Lodging” and in the amount of \$4,803.34 cleared the account.

d. On May 14, 2018, respondent transferred \$18,750 from his trust account ending in 3754 to his Aspen account. Respondent attributed the funds transferred to “Williams.” Also on May 14, 2018, Aspen account check nos. 10691 and 10688, payable to David Sinclair and Mark Neuhaus, respectively, and both in the amount of \$9,375, cleared the account.

65. Similarly, on April 3, 2017, a “Wire transfer from The Hanson Group,” in the amount of \$5,000, was posted directly to the Aspen account. Also on April 3, 2017, Aspen check nos. 10633 and 10634, both payable to “More Sudz, Inc., and in the respective amounts of \$3,000 and \$2,000, cleared the account.

Respondent intentionally misappropriates client funds.

66. Respondent practices primarily in representing individuals in bankruptcy proceedings. As noted, it was respondent’s routine practice to deposit court filing fee

advances provided by clients into the non-trust Aspen account and to later electronically pay the filing fee on the client's behalf from the Aspen account. Relying on the deposit offsets for the Aspen account provided by Wells Fargo Bank pursuant to the Director's subpoena, the Director was able to identify and attribute many client filing fee advances deposited into the account during the period December 2014 to December 2018. The Director was also able to connect many such deposits to a filing fee respondent later paid from the Aspen account. Respondent's conduct of failing to deposit advanced filing fees into a trust account constitutes a failure to safeguard client funds and the commingling of client funds with respondent's own funds. Set forth below is a chart reflecting these deposits of and disbursements of client filing fees:

CLIENT	DEPOSIT DATE	DEPOSIT AMOUNT	DISBURSE DATE	DISBURSE AMOUNT	AMOUNT UNDISBURSED
RP	2/9/2015	\$333.00	2/17/2015	\$335.00	\$0.00
	2/17/2015	\$2.00			
DK	3/3/2015	\$414.00	2/18/2016	\$404.00	\$5.00 ¹⁰
			2/18/2016	\$5.00	
JW	6/18/2015	\$306.00	6/30/2015	\$306.00	\$0.00
LB	7/16/2015	\$335.00	7/21/2015	\$335.00	\$0.00
DL	8/25/2015	\$335.00	10/1/2015	\$335.00	\$0.00
CP	10/30/2015	\$335.00	12/7/2015	\$335.00	\$0.00
ER	12/10/2015	\$200.00	10/3/2016	\$335.00	\$0.00
	1/13/2016	\$135.00			
WW	1/5/2016	\$335.00	1/29/2016	\$335.00	\$0.00
MC	4/12/2016	\$335.00	7/5/2016	\$335.00	\$0.00
JH	5/31/2016	\$335.00	6/14/2016	\$335.00	\$0.00
CH	6/28/2016	\$335.00	9/19/2016	\$335.00	\$0.00

¹⁰ Respondent did not disburse the entirety of DK's filing fee advance. In his May 12, 2020, letter to the Director, respondent states he performed pro bono services on DK's behalf in her dissolution matter. Respondent states DK "told me to keep the extra payment of \$5.00."

CLIENT	DEPOSIT DATE	DEPOSIT AMOUNT	DISBURSE DATE	DISBURSE AMOUNT	AMOUNT UNDISBURSED
RM	7/29/2016	\$329.00	9/22/2016	\$324.00	\$0.00
			9/22/2016	\$5.00	
JH	9/1/2016	\$300.00	10/24/2016	\$310.00	\$0.00 ¹¹
AN/SN	10/6/2016	\$325.00	10/13/2016	\$335.00	\$0.00
	10/11/2016	\$10.00			
LW	10/12/2016	\$335.00	11/7/2016	\$335.00	\$0.00
LS Estate	10/25/2016	\$324.00	11/15/2016	\$324.00	\$0.00
EM	1/19/2017	\$335.00	3/31/2017	\$310.00	\$25.00 ¹²
LI	2/14/2017	\$334.00	4/7/2017	\$334.00	\$0.00
EG Estate	2/23/2017	\$324.00	4/4/2017	\$324.00	\$0.00
MD	3/10/2017	\$335.00	4/3/2017	\$335.00	\$0.00
JG	3/21/2017	\$335.00	6/1/2017	\$335.00	\$0.00
BB	4/7/2017	\$335.00	6/16/2017	\$335.00	\$0.00
SP Estate	4/14/2017	\$324.00	4/21/2017	\$324.00	\$0.00
KC	5/25/2017	\$335.00	5/26/2017	\$335.00	\$0.00
JM	6/9/2017	\$310.00	7/12/2017	\$310.00	\$0.00
KZ	8/22/2017	\$335.00	10/6/2017	\$335.00	\$0.00
NP	9/12/2017	\$35.00	1/5/2018	\$335.00	\$0.00
	9/27/2017	\$300.00			
JB	3/27/2017	\$335.00	9/8/2017	\$335.00	\$0.00
	9/8/2017	\$335.00	11/13/2017	\$335.00	
ME Estate	9/12/2017	\$302.00	9/15/2017	\$302.00	\$0.00
EC	10/3/2017	\$302.00	11/8/2017	\$302.00	\$0.00
CJ	10/30/2017	\$335.00	11/3/2017	\$335.00	\$0.00
CR	11/14/2017	\$335.00	11/30/2017	\$335.00	\$0.00

¹¹ Respondent disbursed more filing fees on behalf of JH than what he held in his non-trust account.

¹² Respondent did not disburse the entirety of EM's filling fee advance.

CLIENT	DEPOSIT DATE	DEPOSIT AMOUNT	DISBURSE DATE	DISBURSE AMOUNT	AMOUNT UNDISBURSED
RH	12/7/2017	\$335.00	12/4/2017	\$310.00	\$0.00
			12/20/2017	\$25.00	
CL	12/18/2017	\$35.00	3/15/2018	\$335.00	\$0.00
	1/12/2018	\$200.00			
	2/20/2018	\$100.00			
RW	1/16/2018	\$235.00	4/17/2018	\$335.00	\$0.00
	1/26/2018	\$100.00			
PI	2/8/2018	\$335.00	4/26/2018	\$335.00	\$0.00 ¹³
RW	4/12/2018	\$335.00	7/23/2018	\$335.00	\$0.00
SA	5/23/2018	\$335.00	5/24/2018	\$335.00	\$0.00 ¹⁴
JM	6/22/2018	\$335.00	8/15/2018	\$335.00	\$0.00 ¹⁵
MV	7/16/2018	\$335.00			\$335.00 ¹⁶
AV	10/26/2018	\$335.00	1/7/2019	\$335.00	\$0.00
TG	10/31/2018	\$335.00	11/1/2018	\$335.00	\$0.00
DB	11/21/2018	\$310.00	12/3/2018	\$310.00	\$0.00
MJ	11/27/2018	\$310.00	12/26/2018	\$310.00	\$0.00 ¹⁷
WS	11/30/2018	\$335.00	12/5/2018	\$335.00	\$0.00

67. The Director's audit of respondent's Aspen account for the period December 2014 to December 2018 also revealed multiple and consistent periods of time in which the balance in the account was short of that necessary to cover the aggregate, undisbursed filing fee advances held in respondent's non-trust account. These periods are reflective of instances during which respondent used aggregate, undisbursed client

¹³ Respondent paid this filing fee from an account other than his Aspen account.

¹⁴ Respondent paid this filing fee from an account other than his Aspen account.

¹⁵ A bankruptcy petition was never filed for JM. In his May 12, 2020, letter to the Director, respondent asserts he made a full refund to JM on August 15, 2018. Respondent provided no verification of this refund to JM. The Director's audit of the Aspen account shows no such refund, therefore, if a refund was made, it was paid through a different account.

¹⁶ A bankruptcy petition was never filed for MV's behalf. In his May 12, 2020, letter to the Director, respondent states he converted MV's filing fee advance to earned fees that he shared with his paralegal.

¹⁷ Respondent paid this filing fee from an account other than his Aspen account.

filing fee advances to cover his own personal and business expenses. When an attorney deposits client funds into his/her business account and uses those funds for a purpose other than that specified by the client, even when the attorney does not intend to permanently deprive the client of his/her funds, this conduct constitutes the intentional misappropriation of client funds. See *In re Eskola*, 891 N.W.2d 294, 299 (Minn. 2017). Respondent intentionally misappropriated client filing fee advances during the time periods described below:

PERIOD OF MISAPPROPRIATION	RANGE OF MISAPPROPRIATION
9-11 February 2015	\$405.00
4-10 March 2015	\$554.00 - \$589.00
17-18 March 2015	\$121.00
26-27 May 2015	\$226.00
29 May - 2 June 2015	\$325.00 - \$407.00
14-16 July 2015	\$112.00 - \$362.00
31 July - 3 August 2015	\$218.00
4-12 August 2015	\$3.00 - \$464.00
18-25 August 2015	\$169.00 - \$428.00
1-9 September 2015	\$147.00 - \$447.00
10-15 September 2015	\$106.00 - \$249.00
16-17 September 2015	\$57.00
18-25 September 2015	\$32.00 - \$426.00
29 September - 7 October 2015	\$180.00 - \$478.00
3-9 November 2015	\$180.00 - \$243.00
12-16 November 2015	\$18.00
17- 20 November 2015	\$64.00 - \$123.00
23 November - 4 December 2015	\$7.00 - \$418.00
7-9 December 2015	\$196.00 - \$295.00
11-17 December 2015	\$225.00 - \$564.00
22-31 December 2015	\$139.00 - \$575.00
4-5 January 2016	\$241.00
8-11 January 2016	\$178.00
14-28 January 2016	\$344.00 - \$1,089.00
1-3 February 2016	\$334.00
4-10 February 2016	\$81.00 - \$543.00

PERIOD OF MISAPPROPRIATION	RANGE OF MISAPPROPRIATION
12-16 February 2016	\$330.00
29-31 March 2016	\$172.00
9-13 June 2016	\$386.00
15-17 June 2016	\$26.00 - \$94.00
21-23 June 2016	\$163.00 - \$231.00
12-14 July 2016	\$267.00 - \$364.00
21-22 July 2016	\$539.00
25-29 July 2016	\$238.00-\$354.00
11-23 August 2016	\$44.00 - \$855.00
24 August - 21 September 2016	\$47.00 - \$1,013.00
22-26 September 2016	\$165.00
7-12 October 2016	\$130.00 - \$241.00
18-25 October 2016	\$43.00 - \$639.00
28-29 November 2016	\$26.00
8-10 February 2017	\$345.00 - \$380.00
15-23 February 2017	\$103.00 - \$1,014.00
13-14 April 2017	\$42.00
21 April - 10 May 2017	\$47.00 - \$810.00
23-25 May 2017	\$330.00 - \$342.00
31 May - 2 June 2017	\$478.00
5-6 June 2017	\$63.00
8-9 June 2017	\$118.00
12-21 June 2017	\$459.00 - \$1,344.00
27-31 July 2017	\$8.00 - \$164.00
23-24 August 2017	\$224.00
30 August - 1 September 2017	\$240.00 - \$402.00
22-26 September 2017	\$95.00 - \$284.00
10-16 October 2017	\$504.00 - 913.00
23 October - 6 November 2017	\$315 - \$1,250.00
8-14 November 2017	\$535.00 - \$595.00
15 November - 1 December 2017	\$134.00 - \$345.00
6-7 December 2017	\$100.00
19-21 December 2017	\$24.00 - \$177.00
27 December - 3 January 2017	\$36.00 - \$347.00
12-16 January 2018	\$98.00
22-24 January 2018	\$267.00 - \$467.00
26-29 January 2018	\$97.00

PERIOD OF MISAPPROPRIATION	RANGE OF MISAPPROPRIATION
7-9 February 2018	\$391.00 - \$877.00
16 February - 12 March 2018	\$83.00 - \$728.00
13 March - 6 April 2018	\$13.00 - \$930.00
11-12 April 2018	\$366.00
13 April - 9 May 2018	\$168.00 - \$931.00
10-11 May 2018	\$169.00
15-16 May 2018	\$116.00
21-23 May 2018	\$102.00 - \$718.00
6-7 June 2018	\$270.00
8-22 June 2018	\$1.00 - \$1,192.00
25-28 June 2018	\$48.00 - \$221.00
17-26 July 2018	\$591.00 - \$716.00
30 July - 1 August 2018	\$292.00 - \$615.00
2-10 August 2018	\$324.00 - \$970.00
20-23 August 2018	\$329.00 - \$359.00
23-24 October 2018	\$266.00
7-9 November 2018	\$309.00 - \$312.00
23-30 November 2018	\$472.00 - \$1,069.00
6 December 2018	\$791.00

Respondent continues pattern of failing to safekeep client funds and the Director discovers additional attorney trust accounts in respondent's name.

68. The Director's audit of respondent's Aspen account for the period December 2014 to December 2018 also reflected an instance in which respondent deposited client settlement funds into the account. Specifically, respondent represented NP in a bankruptcy. Capital One, one of NP's creditors, improperly garnished her salary and respondent commenced an adversary proceeding to recover the garnished funds. On approximately August 6, 2018, after the action was commenced, Capital One voluntarily returned the garnished funds, which totaled \$2,715.48. Respondent deposited those funds into his Aspen account. On August 8, 2018, respondent's Aspen account check no. 10705, payable to NP, in the amount of \$2,415.48 and annotated, "Capital One Settlement," cleared the account. Respondent retained the \$300 difference between funds deposited and disbursed as his fees in the matter. Respondent's conduct

in depositing the NP funds in his Aspen account constituted a failure to properly safeguard client funds and the commingling of client funds with respondent's own funds.

69. On February 5, 2020, the Director learned from the IOLTA Program that respondent had maintained four trust accounts in addition to the account ending in 3754. Two of the additional trust accounts remained open. These trust accounts were a Wells Fargo Bank account ending in 0806 and a U.S. Bank account ending in 3789.

70. On February 11 and 24, 2020, after completing the January 2016 to May 2019 audit of respondent's trust account ending in 3754, and the December 2014 to December 2018 audit of the Aspen account, the Director wrote to respondent. The Director's letters included requests for the following:

- a. Respondent's confirmation of the accuracy of the client filing fee activity set forth in paragraph 66 above.
- b. Identification of the funding deposit for several additional filing fees respondent paid from the Aspen account.
- c. Aspen bank account statements for the period from December 2018 to the date the account was closed.
- d. Information concerning the four additional trust accounts located by the Director.
- e. Books and records for respondent's trust account ending in 3754 for the period June 2019 through February 2020, and the purpose of each deposit made into the account during that period, the legal representation or other connection to the funds deposited, and copies of all documents that refer or relate to the funds deposited.
- f. The January 2019 through February 2020 books and records for respondent's trust account ending in 0806, and the purpose of each deposit made into the account during that period, the legal representation or other connection

to the funds deposited, and copies of all documents that refer or relate to the funds deposited.

71. Finally, the Director's February 11 and 24, 2020, letters reiterated her request for the purpose of each deposit made into respondent's trust account ending in 3754 during the period January 2015 to May 2019, the legal representation or other connection to the funds deposited, and copies of all documents that refer or relate to the funds deposited.

72. Respondent responded to the Director's February 11 and 24, 2020, letters on March 13, 2020. Respondent did not provide the requested identification of the funding deposits for the additional filing fees respondent paid from the Aspen account, stating he did not maintain records of that activity.

73. In response to the Director's request regarding the nature of the funds deposited into his trust accounts, respondent simply stated that he used his trust accounts ending in 3754 and 0806 exclusively "to escrow funds in my role as escrow agent." Respondent's continued and ongoing use of his attorney trust accounts for transactions in which he served, not as a lawyer, but as an escrow agent, was improper.

74. Respondent failed to provide check registers, client subsidiary ledgers, trial balance or reconciliation reports for his trust accounts ending in 3754, 0806 or 3789 for the periods requested. On information and belief, the Director alleges respondent failed to maintain such books for those trust accounts for those periods.

75. With regard to the trust account ending in 0806, respondent stated in his letter that the account "was opened in June, 2019 . . . [and] closed at the end of July, 2019." The bank statements for the trust account ending in 0806, however, reflect an \$.80 balance on June 1, 2019, and a \$35.33 balance on July 31, 2019. In addition, the May 2019 bank statement for trust account 3754 reflects a \$113,000 transfer from that account to the trust account ending in 0806 on May 9, 2019, clearly demonstrating that respondent opened the trust account ending in 0806 prior to June 1, 2019.

76. Among the enclosures to respondent's March 13, 2020, letter were the (a) May 1 to August 9, 2019, bank statements for trust account ending in 3754; (b) December 7, 2018, to August 6, 2019, bank statements for the Aspen account¹⁸; (c) June 25 to July 31, 2019, bank statements for the Wells Fargo Bank trust account ending in 0806; and (d) August to December 2019 bank statements for the U.S. Bank trust account ending in 3789.

Respondent continues to participate in transactions involving Hanson Group and its affiliates that use illegitimate financial institutions to continue fraudulent transactions.

77. The bank statements respondent provided for his trust account ending in 0806 reflected three transactions involving Hanson Group/Harold Boigues.¹⁹

a. On June 25, 2019, \$82,426.13 was wired into the account, and, on June 26, 2019, respondent transferred \$81,500 from the account to Boigues. Respondent received an \$800 fee on the transaction.

b. On July 15, 2019, \$75,000 was wired into the account from RP as an application fee for a \$5,000,000 loan that Hanson Group was to arrange from New York Securities Bank (NYSB) on RP's behalf. NYSB is, however, not a legitimate financial institution and the transaction was fraudulent. On July 22, 2019, respondent transferred \$74,135 of this \$75,000 from his trust account ending in 0806 to Raquel Milagros Russo, Harold Boigues' wife. Respondent received an \$805 fee on the transaction. A loan to RP was never approved and Hanson Group never refunded her \$75,000 application fee.

c. On July 25, 2019, \$218,227.60 was wired into the account from "Onion Magnetics Development." The July 19, 2019, contract regarding this

¹⁸ Respondent stated he closed the Aspen account in September 2019. It is not clear why he provided bank statements for that account only to August 6, 2019.

¹⁹ As noted in paragraph 75 above, the bank statements respondent provided for his trust account ending in 0806 were not complete.

transaction required Prominence Bank to provide an instrument in exchange for payment of 200,000 Euros. The dollar equivalent of \$218,227.60 was deposited into respondent's trust account. As previously noted, however, Prominence Bank is not a legitimate financial institution and the transaction was fraudulent. On July 29, 2019, respondent transferred \$216,000 from his trust account to the Aspen account. Also on July 29, 2019, respondent withdrew the sum of \$215,014.45 from the Aspen account and, on information and belief, forwarded those funds to Hanson Group/Boigues. Respondent received a \$2,182.27 fee on the transaction.

78. The May 1 to August 9, 2019, bank statements for the trust account ending in 3754 that respondent enclosed with his March 13, 2020, letter reflected a deposit of \$113,000. Respondent transferred the \$113,000 to the trust account ending in 0806 in May 2019 (*see* paragraph 75 above). The trust account ending in 3754 maintained a zero balance from May 31 to August 9, 2019, when it appears respondent closed the account. Respondent stated that he closed the account due to "an unauthorized charge."

Respondent continues pattern of misappropriation of client funds.

79. The December 7, 2018, to August 6, 2019, bank statements for the Aspen account respondent enclosed with his March 13, 2020, letter, showed that respondent continued to use the account during that period to deposit and pay client filing fee advances. It appears respondent last paid a filing fee from that account on July 19, 2019.

80. The Director extended her audit of the Aspen account to include the activity reflected on the December 7, 2018, to August 6, 2019, bank statements. The Director's extended audit reflects additional periods of time in which the balance in

respondent's Aspen account was insufficient to cover undisbursed client filing fee advances, again constituting the intentional misappropriation of client funds.²⁰

These additional periods of misappropriation are as follows:

PERIOD OF MISAPPROPRIATION	RANGE OF MISAPPROPRIATION
7-10 December 2018	\$406.00
14 December 2018 - 4 January 2019	\$503.00 - \$1,595.00
22 January - 1 February 2019	\$46.00 - \$656.00
7-11 February 2019	\$94.00 - \$229.00
4-5 March 2019	\$11.00
20-22 March 2019	\$29.00
12-15 April 2019	\$75.00
16-17 April 2019	\$395.00
19-22 April 2019	\$290.00
20-22 May 2019	\$49.00
9-11 July 2019	\$122.00 - \$143.00
18-26 July 2019	\$615.00 - \$1,310.00
29 July - 6 August 2019	\$328.00 - \$216,360.00

81. The \$216,360 shortage reflected in the chart above occurred on July 30, 2019, and was caused by the following series of transactions: (a) on July 25, 2019, a \$218,227.60 wire received from "Onion Magnetics Development S.L. Aba" was credited into respondent's trust account ending in 0806; (b) on July 29, 2019, respondent withdrew \$215,014.45 from his Aspen account, causing a negative balance of \$216,000; and (c) also on July 29, 2019, respondent transferred \$216,000 from his trust account ending in 0806 into his Aspen account.

²⁰ The shortages reflected in the chart contained in paragraph 80 are based only on the \$1,680 in aggregate, undisbursed client filing fee advances that were in the account as of December 6, 2018, later reduced by the MJ filing fee paid on December 26, 2018, and the AV filing fee paid on January 7, 2019. As noted, respondent did not maintain and was therefore unable to provide the Director with client attribution information regarding the client filing fees he deposited into the Aspen account for the period after December 6, 2018.

82. As of August 6, 2019, which is the last date for which respondent provided Aspen account bank statements, the balance in the account was negative \$58.18, which was \$418.18 short of that necessary to cover the \$360 in undisbursed client filing fee advances that respondent was to be holding at that time.

83. The \$360 in undisbursed client filing fee advances that respondent was to be holding as of August 6, 2019, was comprised of the following:

a. A \$25 balance of a filing fee advance respondent received from his client EM on January 19, 2017.

b. A \$335 bankruptcy court filing fee advance respondent received from his client MV on July 16, 2018. Respondent never filed a bankruptcy petition for MV and thus never expended her filing fee advance.

84. On May 12, 2020, the Director wrote to respondent and requested him to state whether he had made the required refunds to several of his clients, including EM and MV. The Director requested that respondent provide verification of any refunds made to these clients or, if he intended not to provide a refund, to explain his basis for not doing so.

85. Also on May 12, 2020, respondent responded to the Director's inquiry stating the following²¹:

a. "[EM]. [EM] signed the attached retainer agreement and was provided with a Chapter 13 bankruptcy that is still in force, Case No. 17-40914."

b. "[MV]. We provided services to this client, including the drafting of the petition. We performed all of the work on her case except attend the 341 meeting. I sent [MV] the attached notice as I do all my clients. I paid my

²¹ In his May 12, 2020, response, respondent also stated that (a) DK authorized him to retain her \$5.00 advance filing fee balance; and (b) he refunded JM's filing fee advance on August 15, 2018. The Director incorporated respondent's statements into the chart appearing in paragraph 65, above.

paralegal \$300.00 and I kept the extra \$35.00 by virtue of my work on the case.

[MV] abandoned the case and although I worked on it, I did not try to collect any additional fees. Although we made efforts to contact her, we were unsuccessful.”

86. Respondent’s unilateral conversion of MV’s filing fee advance to earned attorney fees constitutes the intentional misappropriation of client funds. MV advanced respondent \$335 for the purpose of paying the filing fee for her bankruptcy petition. Respondent did not use the \$335 for his client’s intended purpose and instead disbursed those fees to himself and his paralegal as earned fees.

87. As part of respondent’s May 12, 2020, response to the Director, he provided an unsigned retainer agreement pertaining to his representation of EM. The retainer agreement fails to comply with the requirements of Rule 1.5(b), MRPC, for charging an advance flat fee retainer to be treated as respondent’s property subject to refund. Specifically, respondent’s retainer agreement fails to notify the client that the advance fee will not be held in trust and fails to notify the client that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided. *See* Rule 1.5(b)(1)(iii) and 1.5(b)(1)(v), MRPC. Because respondent’s retainer agreement failed to comply with Rule 1.5(b)(1)(i-v), MRPC, respondent violated Rule 1.15(c)(5), MRPC, by placing the advance fee into his Aspen account rather than his trust account.

The Director’s investigation shows additional and ongoing trust account violations.

88. As previously stated, respondent maintains multiple trust accounts. In his March 13, 2020, letter, respondent stated the following with respect to the four additional trust accounts he had maintained:

a. Wells Fargo Bank trust account ending in 9864. Respondent closed this account in approximately August 2017 “after unauthorized charges were made.”

b. U.S. Bank trust account ending in 1950. Respondent closed this account in approximately September 2018 “after an unauthorized charge.”

c. Wells Fargo trust account ending in 0806. As noted, respondent has stated that this account was opened in June 2019 and closed in July 2019, although the bank statements indicate differently. *See* paragraph 75 above.

d. U.S. Bank trust account ending in 3789. Respondent opened this account in August 2019 and closed it on December 3, 2019, “when I left the bank.”

89. The August to December 2019 bank statements for respondent’s U.S. Bank trust account ending in 3789 reflect the following activity:

a. On August 16, 2019, respondent transferred \$200,000 into the trust account from a U.S. Bank account ending in 4581. The Director had not previously been aware of the existence of this account ending in 4581 and has no knowledge as to its nature.

b. On August 27, 2019, respondent transferred \$14,000 into the trust account from the U.S. Bank account ending in 4581.

c. Also on August 27, 2019, respondent transferred the \$214,000 trust account balance back into the U.S. Bank account ending in 4581.

d. On September 3, October 3, and November 1, 2019, respondent deposited his Social Security benefits into the trust account. Shortly after each such deposit, respondent transferred the benefits to the U.S. Bank non-trust account ending in 4581.

e. During the months of October and November 2019, respondent deposited a total of \$2,546.60 in additional funds into the trust account. Shortly after each such deposit, respondent transferred the funds to the U.S. Bank non-trust account ending in 4581.

90. Respondent's deposit of his own Social Security benefits into his trust account ending in 3789 was clearly not in connection to any legal representation and, therefore, improper.

91. The bank statements for the trust accounts ending in 3754 and 0806 that respondent provided throughout the course of the Director's investigation reflected numerous electronic transfers from the accounts. Respondent failed to provide any memoranda authorizing these transfers and, on information and belief, he failed to maintain those memoranda.

92. Respondent failed to maintain the required books and records for any of his trust accounts in violation of Rules 1.15(c)(3), and 1.15(h), MRPC, as further interpreted by Appendix 1 to the MRPC.

93. Respondent continually, and despite knowledge it was improper, used his trust accounts to accept and transfer funds that were not related to the representation of a client in violation of Rule 1.15(a), MRPC.

94. In the Fujita matter, respondent failed to return the escrow fee of \$1,680 to a trust account after a dispute arose regarding entitlement to the transferred funds in the Fujita matter. Mr. Fujita claimed entitlement to a refund of the total \$168,106.43 paid to respondent's trust account. Respondent's failure to return the disputed third party funds to a trust account until the dispute was resolved violated Rule 1.15(b)(ii), MRPC.

95. Respondent's continuing and ongoing pattern of participating in transactions through his trust accounts with Hanson Group and those connected to Hanson Group in schemes, after he knew Hanson Group and its actors were fraudulent, was dishonest and misleading in violation of Rule 8.4(c), MRPC.

96. When respondent did accept advance filing fees on behalf of bankruptcy clients, he deposited those advanced fees in a non-trust account and disbursed the advance fees to pay his personal and business expenses. This misconduct constitutes the intentional misappropriation of client funds in violation of Rules 1.15(a), and 8.4(c), MRPC.

97. Respondent's conversion of MV's filing fee to earned fees, without the knowledge or consent of MV, constitutes the intentional misappropriation of client funds in violation of Rules 1.15(a), and 8.4(c), MRPC.

98. Respondent failed to timely refund undisbursed advance filing fees to his clients EM and MV. This failure to refund violated Rules 1.15(c)(4) and 1.16(d), MRPC.

99. In the EM matter, respondent's flat fee agreement failed to comply with the requirements of Rule 1.5(b)(1)(i-v), MRPC, and, therefore, respondent's failure to deposit fees received into a trust account in advance of the legal services being performed violated Rule 1.15(c)(5), MRPC.

100. During the course of the Director's disciplinary investigation, respondent provided the Director with knowingly false, incomplete, contradictory, and misleading information in violation of Rules 8.1(b), and 8.4(c), MRPC, and Rule 25, RLPR.

101. Respondent's failure to provide all requested bank records, including the Director's request for bank records pertaining to all Aspen accounts, violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

102. Respondent's conduct in attempting to contract with Fujita to withdraw his complaint from the Director is prejudicial to the administration of justice in violation of Rule 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or imposing otherwise appropriate discipline, awarding costs

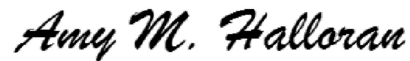
and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.



Humiston, Susan
Oct 7 2020 3:37 PM

SUSAN M. HUMISTON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0254289
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952
Susan.Humiston@courts.state.mn.us

and



Halloran, Amy
Oct 7 2020 10:34 AM

AMY M. HALLORAN
ASSISTANT DIRECTOR
Attorney No. 0393248
Amy.Halloran@courts.state.mn.us